



1 JOSEPH L. BENSON II, ESQ.
2 Nevada Bar No. 7276
3 BENSON & BINGHAM
4 11441 Allerton Park Drive, Suite 100
5 Las Vegas, NV 89135
(702) 382-9797, telephone
(702) 382-9798, facsimile
litigate@bensonbingham.com

6 LARRY W. LAWRENCE, ESQ.
7 Texas Bar No. 794145
8 LAWRENCE LAW FIRM
9 3112 Windsor Rd., Suite A234
Austin, TX 78703
(956) 994-0057, telephone
(956) 994-0741, facsimile
lawrencefirm@aol.com

11 RICARDO A. GARCIA, ESQ.
12 Texas Bar No. 7643200
13 JODY R. MASK, ESQ.
Texas Bar No. 24010214
14 GARCIA OCHOA MASK
820 S. Main Street
15 McAllen, TX 78501
(956) 630-2882, telephone
(956) 630-2882, facsimile
ric@gomlaw.com
17 jody@gomlaw.com

18 Attorneys for Plaintiffs

20
21 UNITED STATES DISTRICT COURT
22 DISTRICT OF NEVADA

23 MATTHEW R. LINDNER, individually; as) CASE NO.: 2:10-cv-00051-LDG-VCF
surviving spouse and legal heir of ELSY LETICIA)
24 GRANADOS-MARTINEZ, deceased; as)
surviving parent and legal heir of CAMILA)
LYNETE LINDNER, a deceased minor; and as)
Guardian Ad Litem of PAULINA GRANADOS-)
25 MARTINEZ, a minor; FERNANDO)
GRANADOS-MAGALLON, individually and as)
surviving spouse and legal heir of REFUGIO)
26 LETICIA MARTINEZ COSIO,)
27)
28 Plaintiffs,)

1)
2 vs.)
3)
4 FORD MOTOR COMPANY, a Delaware)
5 corporation; BERTHA MEZA d/b/a OROZCO)
6 AUTO SALES; EVENFLO COMPANY, INC., a)
7 Delaware corporation; BIG LOTS STORES, INC.,)
8 an Ohio corporation; DOES I through XX,)
through XX, inclusive,)
Defendants.)

)

9 **PLAINTIFF'S OPPOSITION TO DEFENDANT EVENFLO COMPANY, INC.'s MOTION**
10 **IN LIMINE TO EXCLUDE ATTORNEY COURTROOM DEMONSTRATIONS**
11 **("PARLOR TRICKS") [Motion No. 13]**

12 Plaintiff MATTEW R. LINDNER, Individually and as surviving spouse and legal heir of
13 ELSY LETICIA GRANADOS-MARTINEZ, deceased; and as surviving parent and legal heir of
14 CAMILA LYNETTE LINDNER, a deceased minor, through his attorneys, Joseph L. Benson, II of
15 BENSON & BINGHAM, Larry W. Lawrence, Jr. of THE LAWRENCE LAW FIRM, and Ricardo A. Garcia
16 of GARCIA, OCHOA MASK, LLP, hereby submits his Opposition to EVENFLO MOTOR
17 COMPANY, INC.'s Motion in Limine to Exclude Attorney Courtroom Demonstrations ("Parlor
18 Tricks") [Motion No. 13]. This opposition is made and based upon the Memorandum of Points and
19 Authorities that follow below, the papers and pleadings on file herein, and any oral argument
20 entertained by the Court.

21 DATED this ____ day of June, 2015.

22 BENSON & BINGHAM
23

24 /s/ Joseph L. Benson II
25 JOSEPH L. BENSON II, ESQ.
26 Nevada Bar No. 7276

27 Attorneys for Plaintiffs
28

MEMORANDUM OF POINTS AND AUTHORITIES

I.

So called “parlor tricks” are visual demonstrations that depend on circumstances that cannot be shown to have been possible in real world situations. It is a term borrowed from the National Highway Traffic Safety Administration to describe testing that does not simulate real world conditions possible in actual accidents. *See e.g. GMC v. Porritt*, 891 So. 2d 1056, 1058, (Fla. App. 2004). Plaintiffs are not offering any “parlor tricks.” Rather, every demonstration that Plaintiffs’ witnesses perform for the jury will be under circumstances that can easily be demonstrated to fall within the realm of possible forces occurring in a real world rollover accident.

As with the evidence of other similar incidents, a ruling on evidence of courtroom demonstrations would be premature at the *in limine* stage. Such evidence certainly is admissible when the demonstration can be shown to be similar to the facts at issue, such that the jury will not be misled by the demonstration. Evenflo cites the Nevada Supreme Court's opinion in *Way v. Hayes*, 89 Nev. 375, 513 P.2d 1222 (1973), which upheld a trial court's discretion in excluding a courtroom demonstration that was substantially dissimilar from the facts at issue. However, the Nevada Supreme Court has since distinguished *Way* in its opinion in *McCourt v. J. C. Penney Co.*, 103 Nev. 101, 103, 734 P.2d 696, 698 (Nev. 1987), holding it was an abuse of discretion to exclude courtroom demonstrations were they could be shown to be similar to the case in controversy. The *McCourt* court wrote: "where the facts are sharply disputed and the matter is tried to the jury, and there is a proper foundation shown, the court should allow the evidence."

All of the courtroom demonstrations Plaintiffs intend to offer can easily be shown to be similar to the circumstances that would be reasonable and possible in a rollover accident like the one at issue and that the jury could reasonably infer *did* occur in this incident as the Ninth Circuit has already explained in its opinion reversing a prior summary judgment in this case. Any minor

1 differences can be explored during cross-examination and explained to the jury to avoid any
2 nominal possibility of confusion.

3 II.

4 Evenflo's motion in limine should be denied as a pretrial matter. Plaintiffs will prove an
5 adequate foundation for admissibility similar incidents and customer reports during trial.

6
7 DATED this 26th day of June, 2015.

8 BENSON & BINGHAM

9 /s/ Joseph L. Benson II
10 JOSEPH L. BENSON II, Esq.
11 Nevada Bar No. 7276

12 Attorneys for Plaintiffs



CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing **PLAINTIFF'S OPPOSITION TO EVENFLO MOTOR COMPANY, INC.'S MOTION IN LIMINE TO EXCLUDE ATTORNEY COURTROOM DEMONSTRATIONS ("PARLOR TRICKS") [MOTION NO. 13]** was made this date by electronic service to the following:

Rosemary Missision, Esq.
WEINBERG, WHEELER, HUDGINS,
GUNN AND DIAL, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, NV 89118
Attorney for Defendant,
Evenflo Company, Inc.

Charles L. Clay, Jr., Esq.
CHUCK CLAY & ASSOCIATES
225 Peachtree Street, N.E., Suite 1700
Atlanta, GA 30303
Attorney for Defendant,
Evenflo Company, Inc.

Dan H. Ball, Esq.
Richard P. Cassetta, Esq.
BRYAN CAVE
211 N. Broadway, Suite 3600
St. Louis, MO 63102
Attorney for Defendant,
Evenflo Company, Inc.

Larry W. Lawrence, Jr., Esq.
LAWRENCE LAW FIRM
3112 Windsor Road, Suite A-234
Austin, TX 78703
Attorney for Plaintiffs

Ricardo A. Garcia, Esq.
Jody R. Mask, Esq.
GARCIA OCHOA MASK
820 S. Main Street
McAllen, TX 78501
Attorney for Plaintiffs

DATED this 26 day of June, 2015.

Amy L. Sulak
An employee of BENSON & BINGHAM